ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re	)	
	)	
Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service	)	MM Docket No. 94-131
	)	
and	)	
	)	
Implementation of Section 309(j) of the Communications Act - Competitive Bidding	)	PP Docket No. 93-253

To: The Commission

JOINT COMMENTS

ACS ENTERPRISES, INC.
BATON ROUGE WIRELESS CABLE TELEVISION LLC
CABLEMAXX, INC.
MULTIMEDIA DEVELOPMENT CORP.
RAPID CHOICE TV, INC.
SHREVEPORT WIRELESS CABLE TELEVISION PARTNERSHIP
SUPERCHANNELS OF LAS VEGAS, INC.
WIRELESS HOLDINGS, INC.
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January 23, 1995

Summary

The Coalition of Wireless Cable Operators supports the Commission's efforts to improve the processing of MDS applications.

Prior to lifting the present application filing freeze, it is important that the Commission revise its outdated 15-mile protected service area rule in favor of a formula which more accurately represents actual coverage patterns.

The Commission's proposed MSA/RSA/ADI licensing scheme is not compatible with the architecture of MDS systems and their design limitations and would frustrate the objectives of the competitive bidding process. Another alternative, limiting new applications to sites predetermined by the Commission, would sacrifice flexibility and business judgment and add additional burdens to Commission resources. A far superior approach would be the adoption of a national filing window system which is perfectly suited to MDS and has been successfully implemented under similar circumstances in connection with the Low Power Television Service.

The Operators strongly support the Commission proposal to limit the first filing window to established wireless cable operators. It will allow existing operators to "fill-in" their service areas and achieve the necessary channel capacity to be competitive in their markets in the most expeditious manner possible.

Coupling the national window filing system with a

streamlined, short-form initial application, an electronic filing system, and computer interference analysis technology now in use by the Commission, would substantially expedite initial application analysis, and greatly minimize burdens on Commission staff and resources. The Commission can additionally improve the application process by eliminating the requirement that MDS applicants serve interference studies on other licensees and applicants, and by reducing the overly-long 120-day period in which ITFS licensees are allowed to file petitions to deny.

An open outcry auction format is appropriate for MDS. Substantial upfront auction payments are essential to maintaining auction integrity. Bidding preferences for small and minority- and women-owned entities will ensure their participation. To assure that such preferences do not frustrate the important goal of wireless cable operators' reaching competitive "critical mass," such preferences must be premised upon the Commission reserving the first filing window for established operators.

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ACS Enterprises, Inc., Baton Rouge Wireless Cable Television LLC, CableMaxx, Inc., Multimedia Development Corp., Rapid Choice TV, Inc., Shreveport Wireless Cable Television Partnership, Superchannels of Las Vegas, Inc., Wireless Holdings, Inc. and XYZ Microwave Systems, Inc. (together, the "Coalition of Wireless Cable Operators" or "Operators"), by their attorneys, hereby submit these Joint Comments in response to the Commission's Notice of Proposed Rule Making ("Notice"), FCC 94-293, released December 1, 1994 in the above-captioned proceeding.[1]

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[1]These Joint Comments are filed on this day pursuant to Commission's Order Granting Extension of Time for Filing Comments and Reply Comments, DA 95-18, released January 6, 1995, by which the filing dates for comments and reply comments were extended to January 23, 1995 and February 7, 1995, respectively.

Introduction

The Operators operate and/or are in the process of developing wireless cable systems in various markets throughout the country. Collectively, the Operators serve more than 110,000 domestic subscribers, representing approximately twenty percent of all wireless cable subscribers,[2] and have line-of-sight coverage to more than 7.5 million homes.

In their efforts to operate and develop markets for wireless cable service, each of the Operators has a need to satisfy consumer demand for receiving a "critical mass" of channels, to compete with existing cable operations in urban markets and to provide a sole source of multichannel video programming to some unserved or underserved rural markets. The Operators support the Commission's efforts to improve the procedures by which applications for new Multipoint Distribution Service (MDS) facilities are filed and processed. The Commission's goal of enhancing the competitiveness of wireless operators in the multichannel video marketplace, as well as the other public interest goals of the Commission, would be served by adoption of many of the proposals presented in the Notice. The Commission's objectives also would be substantially furthered by other changes discussed herein, such as the adoption of a wireless cable operators' filing window and redefining of the

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[2]According to The Kagan Wireless Cable Databook (January, 1994), the wireless cable industry served 401,000 subscribers as of the end of 1993. Kagan predicted that the industry would serve 582,000 subscribers by the end of 1994 and would serve more than 2,000,000 subscribers by the year 2000.

MDS protected service area to more closely match the actual coverage characteristics of operating systems. As set forth below, those changes should be adopted.

I. THE COMMISSION SHOULD REDEFINE THE PROTECTED SERVICE AREA.

It has been documented thoroughly and often before the Commission that the current 15-mile fixed-radius protected service area boundary for MDS stations is now an outdated fiction that has no current basis in reality. In the Commission's previous MDS rule making, PR Docket 92-80, commenters (including some of those submitting these Joint Comments) proposed that the Commission amend Section 21.902(d) of its rules by changing the formula for calculating the protected service area from a fixed radius to a function of equivalent isotropic radiated power ("EIRP") and height above average terrain ("HAAT") -- a more sound engineering measure of a station's true coverage area.[3] The commenters documented that the current rule is archaic and overly limited in view of the higher-quality equipment available in today's marketplace, which permits MDS stations to receive reliable signals at greater distances. Moreover, according to the Wireless Cable Association International, Inc. ("WCAI"), more than half of existing wireless

[3]The protected service area would be calculated according to a table showing the relationship between EIRP, HAAT and distance. This table was included in the petition for reconsideration in Gen. Docket Nos. 90-54 & 80-113 filed by the Wireless Cable Association International, Inc.

cable subscribers are located beyond the present 15-mile protection boundary.

In most cases, re-defining the protected service area as suggested would result in an expansion of the protected service area according to the EIRP/HAAT formula. Consequently, wireless cable operators could provide uninterruptable service to areas that are outside the existing protected service area. Despite the lack of any assurances that these areas would be protected from interference, some wireless cable operators have nonetheless provided service on a large-scale basis notwithstanding the very real fear that operations in a nearby market would, at some future date, disrupt service. The greater certainty associated with protecting service in those areas would prompt even further expansion of service by such operators, and encourage operators that have been understandably reluctant to venture beyond their protected contours to also expand operations. This in turn would stimulate investment in wireless cable and strengthen the industry's ability to compete in the video distribution marketplace. Moreover, as an additional benefit, the redefinition of the protected service area would limit the available locations for speculators to file applications intended solely to slow channel expansion in existing markets or extract "greenmail" from wireless operators.

In the Commission's Report and Order in PR Docket 92-80, 8 FCC Rcd 1444, ____ n.40 (1993), the Commission indicated that it would "revisit . . . several requests" to redefine and expand the MDS

protected service area when acting upon pending petitions for reconsideration of the Order on Reconsideration in Gen. Docket Nos. 90-54 & 80-113, 6 FCC Rcd 6764, 6765-66 (1991). The time is right for the Commission to take such action. The Operators strongly urge the Commission to take immediate action to amend the rules in accordance with that proposal, effective on or before the present "freeze" on filing of applications is lifted.

II. THE COMMISSION SHOULD ADOPT THE PROPOSED NATIONAL FILING WINDOW SYSTEM.

The Operators agree with the Commission's determination that present procedures for MDS new facility applications need substantial overhaul prior to lifting of the Commission's present filing freeze. The existing application filing and processing procedures are unnecessarily burdensome for both applicants and the Commission alike. But the Commission's laudable goal of reducing needless burdens on the public and its staff would not be served by adoption of a licensing scheme which is incompatible with MDS service and contrary to the public interest. As set forth below, the MSA/RSA/ADI licensing scheme is not viable for MDS service and would operate at cross-purposes with the competitive bidding process. Another alternative, licensing on the basis of Commission-identified sites, would inject gross inefficiency into the licensing process and fail to reduce Commission burdens.

In the Notice, the Commission indicates its inclination towards an option permitting initial filing of short-form

applications, with the goal of reducing administrative burdens. But the Commission wrongly judges that the national filing window approach is incompatible with this goal. As set forth below, a national filing window system can be coupled with use of a short-form application. Together with other improvements in the licensing process such as streamlined electronic filing and computer engineering analysis, the national filing window system would serve the MDS service well, while allowing a meaningful reduction of administrative burdens on the Commission and the public.

A. The MSA/RSA/ADI Approach Is Incompatible With MDS And Contrary To The Public Interest.

Though the MSA/RSA/ADI approach may be facially attractive to the Commission, such a licensing scheme would not comport with the design of MDS systems in the real world. MDS stations are not designed like cellular telephone and proposed Personal Communications Service (PCS) systems, with many cell sites to cover their licensed areas. MDS stations operate much like television broadcast stations, with strategically-located transmitters serving population centers over relatively larger areas. Given the architecture of MDS stations and design limitations, their signals are not, in any practical manner, capable of being confined to limited areas or within rigid geographic boundaries.[4]

[4]Confinement of an MDS signal with the geographic boundaries of Areas of Dominant Influence (ADIs) would be especially

This difficulty is particularly acute given the requirement that such an area-wide licensee protect existing MDS and Instructional Television Fixed Service (ITFS) facilities. Neither MDS nor ITFS is a new service starting with newly-allocated spectrum. Unlike the case of new services which have begun with area-wide licensing such as cellular or PCS, MDS and ITFS authorizations preexist in most of the population centers in the nation. Much of the MDS landscape is thus already carved out, so that in many MSA/RSAs or ADIs only random, oddly-shaped slivers of area could be served by a new area-wide licensee.[5] The limitations of MDS transmission design and propagation stand in the way of the ability to provide such service.

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problematic. The boundaries of ADIs are based on tabulations of broadcast television viewing levels and follow county borders. ADIs vary greatly in size and in many cases are irregular in shape. Although they serve as rough definitions of local television markets, they are inappropriate for use as a service area definition for licensing and their use would lead to anomalous results. Just as television broadcast stations are not capable of limiting signal propagation to ADI boundaries, it would be generally impractical if not impossible to expect MDS stations to do so.

[5]Pursuant to Section 21.901(d)(5), E- and F-Group MDS applications filed for the same MSA (or within 15 miles of the MSA border) are treated as mutually exclusive for administrative purposes, even if their proposed signals would not interfere. Thus, each MSA has a maximum of one E-Group and one F-Group licensee. In addition, in Public Notice, 3 FCC Rcd 2661 (1988), the Commission restricted the filing of new multi-channel MDS applications to proposed transmit sites located at least 50 miles from existing proposals. No such restrictions apply for single-channel MDS applications (MDS-1, MDS-2(2A), H1, H2 and H3) or ITFS, which is also entitled to receive site protection. With the adoption of the licensing scheme proposed herein by the Operators, Section 21.901(d)(5) and the restrictions imposed in the Public Notice would be abolished in favor of the re-defined protected service area.

Because most of the nation's population centers are already being served by existing stations, a license for the "remnants" in each area would not in many cases form the basis of a viable business. The rights to the remnants would have low or no economic value[6] to anyone other than the incumbent wireless cable operator, which might find some worth in using it to "fill in" existing gaps in coverage. Because only one party -- an area's existing wireless cable operator -- is apt to derive any meaningful economic value from such a license, meaningful competition for such licenses at auction is unlikely. Thus a key objective of competitive bidding set forth in Section 309(j)(3)(C) of the Communications Act -- recovery for the public of value from spectrum resources -- would be frustrated.

Since an area-wide license may be of little or no determinable value to the general public, licensing of such rights is likely to draw only competing applications (if any) which are highly speculative or filed for the purposes of "greenmailing" existing licensees.[7] Moreover, given the complicated nature of the existing

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[6]In view of the daunting existing station protection requirements for an area-wide license, even the process of determining value may be difficult if not impossible.

[7]An area-wide licensing system would create great opportunity for "greenmail" because future modifications by existing licensees would be handcuffed by the rights of an area-wide licenseholder. This would substantially disserve the public interest by absolutely limiting the ability of existing licensees to substantially adapt their facilities to future service needs, unless they divert what could be a substantial portion of their capital to pay "ransom" to such a licensee for its assent. This problem would be especially acute if the Commission's outdated MDS protection rule is carried forward. As discussed above, the Commission should revise the

protection requirements, such licensing would create an ideal circumstance for public fraud through investment scams, such as has been previously uncovered in wireless cable and in other services. An unwary public may not fathom the substantial limitations upon the value of a license identified as, for example, a "whole-area wireless cable license for the New York City MSA." Speculative applications and those founded upon unsavory business practices also do direct damage to the integrity of the Commission's processes in the form of defaults of post-auction payments (such as the Commission has recently experienced with some Interactive Video and Data Service (IVDS) auctions) and failure to construct facilities and initiate service.

For all of these reasons, an area-wide licensing scheme is not appropriate for MDS.

B. Licensing Based On Commission-Identified Vacant Sites Would Be Inefficient And Fail To Reduce Commission Burden.

Another alternative filing approach, the limiting of applications to sites predetermined by the Commission, would introduce inefficiency into the licensing process and would not reduce the Commission's administrative burdens. A limiting of future MDS applications to sites to be determined by the Commission would inappropriately displace market forces and business judgment with FCC staff determinations. Inherent in such a regime is loss

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protection rule to a definition based on EIRP and HAAT prior to lifting the application freeze.

of flexibility, both as to specific site location for a new station and the indirect impact of the Commission's predeterminations on potential modification of existing stations. Such a system would further place the wireless cable industry in the position of relying on future determinations by the FCC, and at the mercy of the timing of those actions. Because of the already-strained resources of the Commission, MDS licensees have long suffered from application processing backlogs and other delays in action by Commission staff. Wireless operators often must await Commission action to pursue their business objectives and bring competitive service to the public. The Commission's already-taxed resources would suffer additional strain if given responsibility for identifying available sites and for making them available to applicants. The Commission should not look favorably upon adding yet another onus -- an unnecessary one -- upon its MDS staff.

C. National Filing Windows Are The Best Approach And Would Reduce Burden on FCC Resources.

The Operators urge the Commission to adopt a national filing window procedure for new MDS stations.[8] As the Commission recognizes in the Notice, this process is presently used for processing of applications for the Low Power Television Service (LPTV). There is much to be learned from the Commission's success

[8]Existing licensees should continue to be permitted to file applications for modification of facilities at any time, outside of any established filing windows.

with the LPTV national filing window system. Past problems with LPTV application processing were very similar to the problems now faced by MDS. As now with MDS, the Commission once faced a huge backlog of pending LPTV applications and a cumbersome processing procedure. As now with MDS, circumstances led the Commission to impose a freeze on new LPTV applications. As now with MDS, many LPTV stations had already been authorized at the time of the application freeze. As in the case of MDS, licensing is based on interference contour analysis.

In these similar circumstances, the Commission's move to a national filing system proved to be successful. Because the system discourages speculative competing applications, and because (as in the case of MDS) many service areas had already been licensed, no unmanageable "flood" of new LPTV applications was experienced. The Operators disagree with the Commission's belief that national filing windows for MDS "would likely result in a larger number of mutually exclusive applications" taking "a substantial amount of time to conduct the competitive bidding process." Notice at ¶ 13. The Commission's own best measure, its past experience under similar circumstances with LPTV, shows that it is unlikely that an unwieldy crush of new applications awaits.[9]

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[9]The risk of a "flood" of applications is even lower than that for LPTV. Mutually exclusive LPTV applications are resolved by lottery, which does not require any payment for the value of the license. By contrast, determination by auction requires the winner to pay for the value of the license, and, as urged by the Operators below, typically requires that bidders make a substantial upfront deposit payment towards the auction price. These factors make licenses subject to an auction much less attractive to insincere or

Application "daisy-chains" would not present any onerous problem. To the extent they occur, they may be resolved in the manner as they are now with LPTV, by determining one licensee (by auction for MDS), dismissing any applications mutually exclusive to that license, and then repeating the process with any remaining applications.[10]

Contrary to the Commission's conclusion in the Notice, a national filing window system would support use of a short-form initial application. As a result, the Commission could substantially reduce the processing burden on the Commission's staff from what it is today. Through the Commission's proposed elimination of the filing of unnecessary data, the initial application form can be streamlined. Such a form need only contain the information now required on FCC Form 175 and the proposed site coordinates, antenna HAAT and polarization, and the EIRP.[11] Although each application would undergo an initial acceptability review by the Commission, much or nearly all of this processing could be accomplished electronically using Commission computer programs similar to those now successfully used for LPTV. As discussed below, elimination of the filing of unnecessary data and

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speculative applicants.

[10]As set forth below, the open outcry auction format can readily accommodate this process.

[11]As the Commission proposes in the Notice, no interference study is required for the initial application, as Commission computers would perform the necessary interference analysis for acceptability review.

conversion to electronic filing, in a form which can be routed directly to computer analysis, would reduce the burden of acceptability review upon the Commission staff to a bare minimum.

After the winning applicant is determined at auction, the applicant then would submit a long-form MDS application which includes a complete interference analysis, as proposed by the Commission,[12] and undergo complete legal and technical review.

In adopting the national filing window procedure, the Operators suggest that the Commission establish a policy of providing at least 60 days' advance public notice of each filing window to ensure adequate planning and preparation time for applicants.

III. THE COMMISSION SHOULD ADOPT ITS PROPOSED FIRST WINDOW FOR EXISTING WIRELESS OPERATORS.

The Operators strongly support the Commission's proposal to limit filing in the first window to existing wireless cable operators. As the Commission wisely recognizes, the ability of wireless operators to build their channel complement to a level of market competitiveness with cable television systems is critical to achieving the Commission's long-standing goal of meaningful competition in multichannel video services. Wireless operators face many challenges to realizing this so-called "critical mass" of available channel capacity. A procedure which permits them to

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[12] See Notice at ¶ 9.

license remaining available channels in their service areas, without the interposing of applications by outside parties, would directly and substantially aid their struggle for competitiveness.

Properly defining an "existing operator" for this purpose is critical. The Operators urge the Commission to adopt a definition that reflects the level of development that a bona fide wireless cable operator can reasonably be expected to have achieved. The standard must be high enough to bar pretenders but must include legitimate operators. When the Commission last addressed the issue in 1991, it determined that an "operator" must demonstrate rights to a minimum of four MDS channels before it would be deemed eligible to apply for commercial ITFS channels.[13] At the present stage of wireless cable development, legitimate operators approaching critical mass rightfully should be expected to have achieved more than that four channel base line. The Operators urge the Commission to require that an "existing operator" applicant certify[14] that it has rights (through ownership or lease agreements) to four presently-authorized MDS and/or ITFS channels and, in addition, rights (through ownership or lease agreements) to at least eight additional MDS and/or ITFS channels which are

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[13]This requirement is contained in Section 74.990(c) of the Commission's rules. See also Second Report and Order in Gen. Docket No. 90-54, 6 FCC Rcd 6792 (1991).

[14]The Commission can, as necessary, perform random audits of these certifications, and the petition to deny procedure would be available to the public to challenge the basis of a certification.

presently-authorized or pending.[15] All twelve channels must be collocated or propose collocation with the site specified in the new application. The Operators believe this rule formulation would appropriately build upon the Commission's previous minimum expectation of wireless operators in a manner which rationally tracks the maturation of the industry.

IV. ENGINEERING AND FILING MATTERS.

The Operators generally support the Commission's efforts to simplify engineering matters and streamline the Commission's MDS application filing protocol. The Commission should adopt its proposed codification in its rules of the formula for "free space" interference protection calculations.[16] The Commission should also streamline its filing system by combining forms where possible, eliminating the requirement of data which is no longer necessary (such as the equipment parameters the Commission identifies in the Notice), and by adopting an electronic filing system. Electronic filing of technical information might be especially beneficial insofar as the data can be directly transferred by the Commission to its computers for interference analysis -- in effect creating an almost fully automated system for application acceptance analysis.

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[15]"Pending" for the purposes of the rule should mean a pending new station application which has been accepted for filing or a modification application.

[16]The Operators also urge the Commission to promptly initiate an appropriate proceeding to review interference protection and other important issues related to digital transmission.

In addition to the proposals of the Commission, the Operators suggest the elimination of the requirement in Section 21.902(i)(3) of the rules that an applicant serve an interference study on other licensees and pending applicants. This substantial burden is not required for other services such as broadcast. For those other services the Commission's public notices are deemed sufficient notice of a filed application. The existing burden upon applicants carries with it an inappropriate and substantial risk that applicants cannot directly control -- the possibility of a failure of service upon one of the parties through misdelivery. Eliminating the service requirement would end the burden and attendant risk and foster attention by prudent licensees to the Commission's public notices.

Also, the Commission should eliminate the provisions of Section 21.902(i)(6)(i) granting ITFS licensees and permittees 120 days to file petitions to deny MDS applications for new and modified facilities. This rule has served only to unnecessarily delay the initiation or expansion of MDS service. Rather, as set forth below, upon the filing of a post-auction long-form application by the winning bidder, the Commission should issue a public notice providing all interested parties -- ITFS and MDS alike -- a thirty-day period to file petitions to deny.[17] Having a common petition period for ITFS and MDS will offer greater

[17]ITFS licensees and others would, in practice, actually have more notice than the formal thirty-day period, because they would be made aware of applications by Commission public notice of the auctions and of the initial short-form filings.

administrative certainty and efficiency for the Commission and the applicant.

V. AUCTION FORMAT

A. Oral Bidding Is The Most Appropriate Auction Method In The MDS Context.

The Operators support open outcry auctions as the most appropriate method of competitive bidding for vacant MDS channels. The relatively few bidders and low values that can be expected in the MDS competitive bidding process suggest that the Commission should implement a simple and low-cost bidding method.

The Operators agree with the Commission's tentative conclusion disfavoring simultaneous multiple round ("SMR") bidding in the MDS context. As the Commission explained in its Fourth Report and Order establishing procedures for IVDS auctions, a simple, low-cost auction method is preferable "where the value of licenses decreases, and thus the benefits of [SMR] bidding diminish relative to the cost and complexity" of staging an SMR auction.[18] In light of the comparatively few bidders and expected low value of the remaining MDS channels, SMR auctions would introduce unnecessary administrative expense and complexity to the competitive bidding process. These added expenses would fall upon the Commission as well as potential applicants.

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[18] Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253 (FCC 94-99), released May 10, 1994 ("Fourth Report"), ¶ 9. In this regard, channels for a given area would be auctioned sequentially, with more lucrative four-channel E- and F-Group channels auctioned immediately before single-channel MDS 1, MDS 2(2A), H1, H2 and H3 channels in that area.

Further, upon adoption of the protected service area definition described supra, it is anticipated that many areas would have available channels but that only a small number of channels in each area would be vacant. This characteristic illustrates that the MDS channels to be auctioned would not have a high degree of interdependence, the Commission's basis for adopting SMR bidding in the PCS service.[19]

SMR auctions will not readily eliminate "daisy-chain" situations. "Daisy-chain" applications involve a number of proposed facilities that, considered together, are mutually exclusive, but whose mutually exclusive relationships could change depending on which authorization is granted first.[20] Establishing whether vel non a "daisy-chain" situation exists requires a thorough engineering analysis which could not feasibly be completed during an SMR auction.

The Operators believe that sealed bid auctioning also is an inappropriate bidding procedure because open competition is lacking. The economic value of an FCC license cannot be determined in a vacuum. Rather, the value of a particular license to a particular applicant depends on both the pre-existing business plan of the particular applicant and the events occurring at an auction

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[19]See Fifth Report and Order in PP Docket No. 93-253, 9 FCC Rcd 5532 (1994).

[20]That certain applications may be linked in a "daisy chain" does not suggest that such applications in each particular area are interdependent. To the contrary, "daisy chains" commonly are created where only a small part of the subject contours overlap and, thus, the applicants are seeking to serve different areas.

session. For instance, a successful bidder for an E-Group channel block would be more likely to bid higher for an H-channel in an open outcry auction because the incremental value of channels to that bidder would increase as the auction proceeds. Consequently, sealed bidding could lead to skewed results in which bidders spend excessive capital to buy some licenses or are locked out of others, with no opportunity to adjust their bid for a particular license. In a situation where one bidder has successfully bid for most (but not all) available channels, this would encourage a private auction of channels as the primary aggregator is forced to pay greenmail for access to the remaining channel(s). Sealed bid auctions also do not maximize the potential revenues flowing to the Commission.

By contrast, sequential oral (open outcry) auctions advance several public interest objectives. First, oral auctions provide bidders with instant information on the value of licenses so that bidders may adjust their bids as the auctions proceed. Second, as the IVDS auctions illustrate, oral auctions will result in substantial revenues for the government. Third, oral auctions are relatively inexpensive to administer, and have proven to be an efficient and expeditious way to process applications. Finally, because the Commission has prior experience with open outcry auctions in the IVDS service (as further discussed infra), a new set of rules and procedures do not need to be created, thereby minimizing errors and adding certainty to the process.

B. Substantial Upfront Payments Will Deter Insincere Bidders.

The Operators support substantial upfront payments in order to prevent insincere bidders from infecting the Commission's MDS auctioning procedures. This requirement was generally successful with the IVDS auctions. Under the IVDS procedures, each applicant was required to show to the Commission immediately prior to the auction a cashier's check for at least $2,500 in order to enter the auction. Bidders were then required to make immediate payment of $2,500 for every five licenses won. For the IVDS auctions, the Commission established a set $2,500 fee as opposed to a "per pop" formula in order to reduce the complexity of the auction process and because of the extremely large upfront payments that such a formula would yield in more populated areas.

The Fourth Report requires that each bidder in open outcry auctions make upfront payments reflecting the maximum number of licenses it desires to win. Once a bidder wins the number of licenses reflected in its upfront payments, it is precluded from bidding in further auctions.

Similar procedures should be adopted for MDS. A cashier's check in the amount of $2,000 per channel should be shown to the Commission (or the auction contractor) before the auction session begins. An applicant cannot be the high bidder for more channels than its deposit covers.[21] As the auction proceeds, an accurate

[21]A "per pop" fee would not be appropriate where applicants are defining the discrete filing area for which they are applying.

record can be maintained to prevent bidders from exceeding their maximum allotted number of high bids.

Establishing these base eligibility requirements will deter insincere applicants from frustrating the ability of legitimate, well-funded applicants from participating. Moreover, upfront payments will decrease the likelihood that winning bids will be defaulted.

C. Bidding Preferences Similar To Those Implemented In Connection With IVDS Will Ensure Meaningful Participation By Small Businesses And Minority-and Women-Owned Entities.

For the national windows (i.e., those filing windows that open after operators have filled in their markets, as described supra), the Operators believe that the bidding preferences established for IVDS should be applied in the MDS context. These rules promote Congress' objective of ensuring participation by small businesses[22] and minority- and women-owned businesses while preserving the advantages of open and competitive bidding for licenses.

Indeed, it would be nearly impossible for such population determinations to be made.

[22]The Operators submit that a definition of "small business" similar to that set forth in Section 1.2110(b)(1) of the Commission's rules may be appropriate for the MDS service. That rule defines a "small business" as "an entity, together with its affiliates, that has no more than $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years." The definition of "affiliate" set forth in Section 24.720(l) also would appear to prevent "large" businesses from obtaining the "small business" benefits.